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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In Re:	) BANKRUPTCY CASE NO.: 10-71788
	)
Jesus Edgar Montano,	) Chapter 7
	)
Debtor	) ADVERSARY CASE NO.: 11-04008 WJL
	)
	) <b>MEMORANDUM OF POINTS AND</b>
	) <b>AUTHORITIES IN SUPPORT OF FOR</b>
HERITAGE PACIFIC FINANCIAL, LLC, a	) <b>ASSIGNMENT OF RIGHTS PURSUANT TO</b>
Texas Limited Liability Company	) <b>CCP§708.510(a) AND FRCP 69(a)—Chapter 13</b>
Plaintiff,	) <b>Trustees</b>
	)
v.	)
	)
JESUS EDGAR MONTANO,	) Hearing time: 10.30 a.m.
	) Hearing date: June 12, 2013
Defendant.	) Hearing Place: Room 220, 1300 Clay Street,
	) Oakland, California, 94612

**INTRODUCTION**

On January 25, 2013, after being properly moved by Defendant Jesus Montano under Federal Rule of Civil Procedure 54, and pursuant to 11 U.S.C. §523(d), the Court entered an order awarding Defendant Jesus Montano attorney's fees incurred in defending against the 523(a) non-dischargeability action filed by Heritage Pacific Financial.

1 The Court subsequently entered an order allowing Defendant to serve Rule 69 post-  
2 judgment interrogatories. These were served on the Plaintiff/Judgment Debtor Heritage Pacific  
3 Financial (“HPF”) on March 20, 2013. HPF’s response was due on April 22, 2013. HPF has  
4 not responded. *See Affidavit of Tessa Meyer Santiago*, filed in support of this Motion.  
5

6 No superseadas bond has been filed to delay execution on the judgment.

7 Defendant moved the Court for an order of assignment on May 13, 2013. The hearing  
8 was held June 12, 2013. After hearing oral argument from Defendant’s counsel, the Court  
9 granted Defendant’s motion with respect to the commercial entities and to debtors who were  
10 represented by counsel. With regards to the Chapter 13 trustees affected by the proposed order,  
11 the Court gave Defendant leave to re-file the Motion with service to the Chapter 13 trustees. *See*  
12 *Clerk’s Minutes Entry*, dated 6/12/2013, stating “Counsel to file and serve trustee’s . . . with  
13 motion and re-schedule for hearing.”  
14

15 In accordance with the Court’s instruction, Defendant hereby resubmits his motion for  
16 an order of assignment regarding funds owed Heritage Pacific Financial in possession of United  
17 States Chapter 13 Trustees.  
18

### 19 **MECHANISM OF ASSIGNMENT MOTION**

20 Judgment Creditor Montano seeks to enforce the judgment under Federal Rule of  
21 Civil Procedure 69(a)(1) and use the law of the State of California to do so.  
22

23 Rule, 69, Execution, provides that

24 A money judgment is enforced by a writ of execution, unless the court directs  
25 otherwise. The procedure on execution—and in proceedings supplementary to  
26 and in aid of judgment or execution—must accord with the procedure of the state  
27 where the court is located, but a federal statute governs to the extent it applies.

28 Defendant wishes to employ the remedies permitted under California Code of  
Civil Procedure (“C.C.P.”) §708.510(a). Under Code of Civil Procedure Section

1 708.510, the Court is authorized to issue an order directing the judgment debtor to assign  
2 all or part of a right to payments due or to become due to the judgment creditor or to a  
3 receiver, appointed pursuant to Article 7 (commencing with Section 708.610). Under  
4 C.C.P. Section 708.510 payments due from the following sources are subject to an  
5 assignment order: rents, commissions, royalties, payments due from a patent or  
6 copyright, insurance policy loan value, accounts receivable, general intangibles,  
7 judgments and instruments.  
8

9  
10 An assignment order reaches a broader range of property rights than levies and  
11 executions. Levies and executions reach only that money which is non-contingent, and in  
12 which the accounts are immediately due and payable, and without a defense. This  
13 assignment order would reach all accounts, accounts receivables and rights to payment of  
14 money, whether owed now owed or in the future, from “account debtors” who may owe  
15 money to the underlying judgment debtor.  
16

17 The sole constraints placed on the Court are that the assignment may be ordered to  
18 the extent necessary to satisfy the money judgment and that, where part of the payments  
19 are exempt, the amount of the payments assigned should not exceed the difference  
20 between the gross amount of the payments and the exempt amount. C.C.P. § 708.510, (c),  
21 (d), (e), (f).  
22

23 The Legislative Comment under C.C.P. 708.15 indicates that the court has great  
24 flexibility in fashioning relief, which itself would enable Defendant to serve the  
25 assignment order and obtain payment of amounts which are due or may be due in the  
26 future. The Legislative Comment provides as follows:  
27

28 **Legislative Committee Comment—Assembly 1982 Addition**

1           Section 708.510 provides a new procedure for reaching certain forms of  
2 property that cannot be reached by levy under a writ of execution, such as the  
3 nonexempt loan value of an unmatured life insurance, endowment or annuity  
4 policy. See Section 699.720(a)(6), 704.100. It also provides an optional  
5 procedure for reaching assignable forms of property that are subject to levy, such  
6 as accounts receivables, general intangibles, judgments and instruments. This  
7 section does not make any property assignable that is not already assignable. This  
8 remedy may be used alone or in conjunction with other remedies provided in this  
9 title for reaching rights to payment, such as execution, orders in examination  
10 proceedings, creditor's suits and receivership. This use of this remedy is subject  
11 to limitations on the time for enforcement of judgment.

12           The purpose of an assignment order is the same as a contractual assignment under  
13 C.C.P. §708.530, which provides that "The effect and priority of an assignment ordered  
14 pursuant to this article is governed by Section 955.1 of the Civil Code. For purpose of  
15 priority, an assignee of a right to payment pursuant to this article shall be deemed a bona  
16 fide assignee for value under the terms of Section 955.1 of the Civil Code."

17           Assignments are found under Civil Code 955.1:

18           **§955.1**

- 19           (a) Except as provided in Section 954.5 and 955 and subject to subdivisions (b)  
20 and (c), a transfer other than one intended to create a security interest . . . of  
21 any payment intangible and any transfer of account, chattel paper, payment  
22 intangibles, or promissory notes excluded from coverage of Division 9 of the  
23 Commercial Code shall be deemed perfected as against third persons upon  
24 there being executed and delivered to the transferee an assignment thereof in  
25 writing.  
26           (b) As between bona fide assignees of the same right for value without notice, the  
27 assignee first giving notice thereof to the obligor in writing has priority.

28           The effect on the obligor's rights is found under C.C.P. §708.540, which provides  
as follows:

**§708.540.**

          The rights of an obligor are not affected by an order of assigning the right to  
payment until notice of the order is received by the obligor. For the purposes of  
this section, "obligor" means the person who is obligated to make payments to the

1 judgment debtor or who may become obligated to make payments to the judgment  
2 debtor depending upon future developments.

3 An assignment order permits the judgment creditor to serve the order through the  
4 mails (or process server).

### 5 **REACH OF AN ASSIGNMENT ORDER**

6 An assignment order reaches all obligations which may be owed by the obligor i.e.,  
7 the person obligated to make payments to HPF. These obligations include, but are not  
8 limited to, for example, all rights to payments of money, accounts, funds on hand, funds  
9 in a deposit account, or otherwise. *See Chicago Pneumatic Tool Co. v. O.V. Stonestreet,*  
10 *et al.*, 107 F.R.D. 674 (S.D.W. Va. 1985)(court has inherent power to order a party to  
11 assign its rights, title and interest in financial accounts to judgment creditor); *Philippine*  
12 *Export and Foreign Loan Guarantee Corp. v. Chuidian*, 218 Cal. App.3d 1058  
13 (upholding court's power to require debtors to assign their interest in debts or other  
14 property).  
15  
16  
17

### 18 **OBLIGORS UNDER THE ASSIGNMENT ORDER**

19 Chapter 13 Trustees. Judgment Creditor has factual basis to believe that the Chapter 13  
20 trustees in the United States Bankruptcy Courts of the federal districts of Central California,  
21 Eastern California, Northern California, South California, Southern Florida, Middle Florida,  
22 Arizona, and Nevada receive funds owed to HPF.  
23

#### 24 **CENTRAL DISTRICT OF CALIFORNIA**

25 Amrane Cohen, 770 The City Drive South, Suite 8500, Orange, CA 92868  
26 Nancy K. Curry, 700 S. Flower Street, Suite 1215, Los Angeles, CA 90017  
27 Rodney A Danielson, 3787 University Avenue, Riverside, CA 92501  
28 Kathy Anderson Dockery, 700 S. Flower Street, Suite 1950, Los Angeles, CA 90017  
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Rick A Yarnall, 701 Bridger Avenue, Suite 820, Las Vegas, NV 89101

**CONCLUSION**

As shown in the declaration, the current balance due on the judgment is a principal of \$70, 867.31, and interest on the post-judgment balance which continues to accrue at \$27.18 per day (calculated at \$70,867.31 x 0.14 divided by 365 days).

HPF has declared that it will not voluntarily pay on the judgment entered in Defendant's favor. HPF has also failed to answer the Rule 69 post-judgment

1 interrogatories. HPF has not authorized its counsel to represent it in matters of settlement  
2 of this matter. *See* Affidavit of Tessa Meyer Santiago, filed herewith. HPF did not oppose  
3 Defendant's previous motion nor appear at the June 12, 2013 hearing.  
4

5 Therefore, Judgment Creditor requests that the court issue an Assignment Order  
6 assigning rights to payments due HPF from the Chapter 13 trustees named herein to Jesus  
7 Montano, and that right to payment made under this order continues until the amount  
8 necessary to pay the judgment has been received by Defendant's counsel.  
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10 DATED: July 2, 2013

Respectfully Submitted,

11 /s/ Tessa Meyer Santiago  
12 Tessa Meyer Santiago  
13 Attorney for Defendant  
14 Jesus Montano  
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